
APPENDIX G

INFORMATION RE: GOVERNMENT LAND SALES

JUL 31 2003

QUESTION 2: Government

"Please provide a list including dollar amount, brief description of purpose and identification of each grant, contract, appropriation or other financial benefit to TNC conferred by a government agency (and program, example North American Wetlands grant awards, Forest Legacy Grant awards) since January 1, 1998. In addition, please provide a similar listing for grants and contracts received from or given to the National Fish and Wildlife Foundation; the National Forest Foundation; and the National Park Foundation since January 1, 1998."

To the extent that TNC received appropriated dollars from government agencies in the form of grants, cooperative agreements, or contracts, those transactions are covered by the charts entitled "Federal Gov't Agency and Pass-Through Agreements with The Nature Conservancy 7-1-97 – 6/30/02," "State and Local Gov't Agency Awards (State and Local Funds) to The Nature Conservancy 7/1/97 – 6/30/02," "National Fish and Wildlife Foundation Grants to The Nature Conservancy 7/1/97 – 6/30/02," and the narrative explanation of our awards from/to the National Forest Foundation and the National Park Foundation.

There is another category of transactions that could be interpreted as falling under "other financial benefit to TNC conferred by a government agency," but for which no identifying information is available in any of the Conservancy's financial systems. These are projects in which the Conservancy is a recipient of "mitigation" funds from a government agency, e.g. where private entities have been required by law or court order to pay settlement funds, and those funds are managed and disbursed by an agency to the Conservancy to carry out a conservation-related project. Generally, these funds come to The Conservancy without federal, state, or local "grant administration" requirements and do not have to be identified for purposes of the Conservancy's annual OMB Circular A-133 audit. These projects, therefore, are not identified in the Conservancy's financial systems as having come from government agencies.

Recovery of Costs in Government Real Estate Transfers

POLICY:

The Nature Conservancy will recover only its costs when transferring real estate or any interest in real estate to a government agency for a conservation purpose.

This policy is intended to apply to:

- All transactions in which the Conservancy holds title to real estate, or an interest in real estate ("Conservancy real estate"), which is then transferred in whole or in part to the government for a conservation purpose.
- All governments – Includes (i) U.S. federal, state, and local governments, and (ii) foreign governments, and (iii) Native American tribes, corporations and similar entities when using federal, state, or local government funds for a purchase.
- All real estate – Other than real estate expressly excluded below, this policy applies to all Conservancy real estate, regardless of the Conservancy's length of ownership or original intent for the real estate.

This policy does not apply to:

- Non-Conservation Transfers – Transfers to the government of non-conservation real estate and transfers to the government for non-conservation purposes (such as tradelands, rights-of-way, roads, trails) if approved by the Division Director (and subject to the rules on partial sales to the extent applicable).
- Land Exchanges – Transactions where the Conservancy transfers real estate to the government and receives real estate back in exchange.
- Government Assists – Transactions in which the Conservancy does not take title to real estate, but assists the government in acquiring title (including the assignment of options).
- Government Grants and Awards – Real estate acquired by the Conservancy with government grant, contract or other award funds, or real estate purchased with Conservancy funds that is used as a match for a government grant, contract or award. The government rules and regulations related to the grant, contract, or award will govern.
- Leases to the government of Conservancy real estate.

Definition of "real estate": The term "real estate" shall include, but not be limited to, fee title, any undivided or other partial interest, remainder interest, conservation easement, land dedication, lease, water right, mineral right, timber right, development right, restrictive covenant, or other similar real estate interests in land or structures.

Waiver Procedure: In the event that this Policy will result in an unanticipated or unreasonable outcome, the Division Director may submit a written request to an appropriate committee appointed by the President or Chief Conservation Officer for a limited waiver of the Policy. The committee will decide on the waiver request based on the following criteria:

- i. The waiver will not violate the intent and spirit of the Policy; and
- ii. The waiver accomplishes an important conservation objective; and
- iii. The waiver is likely to withstand public scrutiny in light of the overall Policy.

All waivers will be reported to the Board of Governors.

QUESTION 2: Government

NARRATIVE RE: TRANSFERS TO FEDERAL AGENCIES

General

The spreadsheet summarizes specified sales and transfers of land or interests in land from The Nature Conservancy to federal agencies. The transfers (sales, gifts, or exchanges) are for at least \$500,000 and occurred between July 1, 1998 and June 30, 2003.

The information on this spreadsheet comes from two Nature Conservancy systems -- the General Ledger and the Biological and Conservation Database (BCD). These two systems have been used in order to provide the most complete information available from TNC's systems related to these transactions in response to the Committee's detailed question. The General Ledger was established to meet the requirements of appropriate accounting and auditing standards, and, as such, does not always display numbers in exactly the format requested by the Committee. In those instances where it was appropriate and feasible to do so, we have made manual adjustments to answer the Committee's questions.

The Committee should note that many of the transactions on the spreadsheet represent partial components of a larger project. For example, transfers from the Conservancy to a particular federal agency sometimes will go hand-in-hand with transfers to other federal agencies, state agencies, and other non-profits as well as with the retention of land or rights in land by the Conservancy. In addition, a transfer relating to one of the projects summarized here may have taken place before July 1, 1998 or after June 30, 2003. Costs identified on the spreadsheet related to the transfer of the land are also similarly constrained based on those start and end dates.

Cost of Land/Interest Acquired Column

This column, derived from the General Ledger, identifies the price TNC paid to acquire the land. It is based, however, on the interest in land that was transferred out. For example, if TNC paid \$10,000 for 10 acres, and then transferred those 10 acres to a federal agency, \$10,000 would be in that column. If TNC only transferred 5 acres out to a federal agency, the General Ledger would contain \$5,000, taking the price per acre for the acquisition and then calculating the 5 acre transfer based on that per acre amount. The \$5,000 would appear in this column.

Gift of Land/Interest Acquired Column

This figure is taken from the General Ledger. There must be a description of this value in the Conservancy's land transaction file for an amount to be entered here. The Conservancy will not assume that a gift has been made unless credible information is in its possession (e.g. a copy of an 8283, an independent appraisal, or our own internal analysis).

Other Costs of Acquisition and Disposition Column

These figures are taken from the General Ledger. They represent direct and other costs that the Conservancy has incurred to both acquire and transfer the land.

The General Ledger is set up on a “first out” basis. A land project, such as the Cat Island National Wildlife Refuge project in Louisiana, will have a unique cost center in the General Ledger; separate tracts purchased will have separate “subcenters” assigned, to which costs are charged and payments entered. That subcenter could encompass multiple transactions OUT if a tract was transferred out in parts. All of the costs in that subcenter up until the date of the first transaction OUT will be attributed to that first transaction IN. Any costs that accumulate between the first transaction OUT and the second transaction OUT will be attributed to the second transaction OUT, and so forth.

The costs accumulated in a subcenter will relate to the acquisition as it came in; for example, if the Conservancy purchased a 50-acre tract but transferred out only 25 acres, the General Ledger will display the costs relating to the 50 acres. We have adjusted this number to take into account situations where a different number of acres came in and went out or where acres came in as fee and went out as an easement. In the former situation, we determined the percentage of the acquisition IN that went OUT (in our example of 50 acres IN and 25 acres OUT = 50%) and then applied that percentage to the total costs that were in the General Ledger. In the latter situation, we determined the percentage for the price of the easement over the price of the fee acquisition and then applied that to the total costs.

Finally, as a general rule, only the costs that are in the General Ledger as of the end of the Conservancy’s fiscal year in which the transfer OUT occurred show up here; i.e. if a transfer occurred on June 1, 2001, costs accrued as of June 30, 2001 would be displayed in this column. Because of this, some costs billed subsequent to the transfer OUT being recorded on the General Ledger, i.e. a later billing for an appraisal, may not be included in this column.

Other Cost Recovery Column

To the extent that costs are separated in the General Ledger, we have separated out the direct and other costs we received as part of the transactions OUT from recovery of costs attributable directly to land.

Amount Donated to Government Column

There are certain transactions in which TNC donated outright land to a federal agency, e.g. #12 - Hobe Sound Sandhill. Such donation will be displayed on the spreadsheet. This column also displays donations beyond outright donations of land and displays the costs that the Conservancy absorbed in excess of the amount received from a federal agency. The number here is the result of a mathematical calculation, using other spreadsheet columns: (Cost of Land/Interest Acquired plus Gift of Land/Interest Acquired plus Other Costs of Acquisition) – (Land Cost Recovery plus Other Cost Recovery). Given the artificial cut-off date and challenges presented by the “Other

Costs of Acquisition and Disposition” column, these figures should be viewed as providing a snapshot of the financial situation at the time of the transfer OUT for a particular transaction. For example, in the Cat Island National Wildlife Refuge project, transfers OUT have continued after the June 30, 2002 cut-off date, and we have continued to recover costs from the federal agency, reducing the amount shown in this column.

Also, it is very important to note that because the Conservancy generally does not reappraise properties at the time of sale to the federal government, the amount donated column reflects only the book value rather than the fair market value of the property. In cases where the Conservancy has held the land for an extended period of time and the property has appreciated in value, the actual value of the property donated and thus the actual value of the gift is often much more than the amount reflected in this column. For example, in California, in FY 2001, the Conservancy transferred 8,500 acres on Santa Cruz Island to the National Park Service at no cost. The land is carried on the Conservancy’s books at \$57.70 an acre, which was the value in 1978. On the Conservancy’s books, the gift to the National Park Service is recorded at \$490,450 (8,500 acres multiplied by \$57.70) so it does not even show up on the chart for Question 2 because it is under \$500,000. The National Park Service estimated the land’s value at the time of donation to be \$25 million.

Appraisal at Time of Sale Column and Proof of Compliance with Federal Appraisal Standards Column

The Conservancy does not obtain an appraisal at the time of transfer. Federal law places the obligation for valuing intended purchases on the federal agency. If the Conservancy received a “Statement of Just Compensation” from the federal agency that was acquiring the land/interest from TNC, we have assumed that the Federal Appraisal Standards have been met.

Form 990 Valuation Amount Column

The figure put in this column and that is also used to calculate the “Cost of Goods Sold to Gov’t” lines on the Form 990 is the “bookvalue” taken off the General Ledger when the transfer OUT occurs. For example, if the Conservancy bought 100 acres in 1998 for \$50,000 and sold those 100 acres in 2000 for \$60,000, \$50,000 is taken off the Conservancy’s General Ledger and is the amount used for the Form 990. Using the same scenario but assuming that the Conservancy sold 50 acres in 2000 for \$30,000, a per acre calculation is figured for the acquisition IN and then applied to the 50 acres. If the Conservancy acquired land in fee and transferred easement rights out, then the amount taken off the General Ledger and used for the Form 990 is the “transfer bookvalue” attributable to the easement. Sometimes that value will be based on an appraisal. In the case of Wetland Reserve Program easements (from the U.S. Department of Agriculture), of which there are a number on the spreadsheet, the bookvalue is the price the Department of Agriculture paid for the easement. In other cases, Conservancy staff with real estate experience make a judgment about easement bookvalue relative to the original fee book value. Those judgments are documented and the appropriate value is entered into the General Ledger and BCD and then aggregated for the Form 990.

In all cases, the figures used to calculate the “Cost of Goods Sold to Government” line on our Form 990 do not include any direct or indirect costs recovered.

The “Cost of Goods Sold to Govt – Cost” line on the Form 990 is the aggregate of the bookvalues identified above for all of the sales OUT that occurred within a specific Conservancy fiscal year. To the extent that any transfers OUT related to acquisitions that involved donations in whole or in part, for example those transactions in which there are numbers in the “Gift of Land/Interest Acquired” Column, those donations are aggregated and entered on to the “Cost of Goods Sold to Govt – Gift” line on the Form 990.

Specific Source of Funding Column

For many of the transactions, there is a “LPF” notation. The Conservancy’s Land Preservation Fund (LPF) is an internal revolving fund that is the principal source of funding for the Conservancy’s land transactions. A Conservancy management unit can borrow from the LPF for an urgent conservation project today by simultaneously committing to a corresponding obligation to repay the amount over time, with interest. Effectively, this borrowing and repayment cause the LPF to “revolve” and therefore be available for other conservation projects. The interest rate of the LPF is set by the Conservancy’s Chief Financial Officer and reflects a variety of considerations including the Conservancy’s own cost of capital and prevailing market interest rates. Currently, the annual interest rate charged on LPF loans is 4%, compounded monthly (effective yield of 4.0741%). The loan term is typically 3 years.

April 23, 2004

Responses

To

Senate Finance Committee Questions on Land Sales to Governments

This memorandum responds to eleven of the questions concerning sales of conservation lands to governments set forth in Part II of the letter dated March 3, 2004 to The Nature Conservancy (the "Conservancy") from Senators Grassley and Baucus on behalf of the Committee on Finance of the United States Senate (the "Committee").¹

Six of these questions focus on the financial terms and conditions of the Conservancy's conservation land sales to governmental entities (Questions 3 and 9 of Part II of the Committee's letter); how the lands involved in these transactions are identified (Question 11) and how the governmental purchasers are identified (Question 12); the use of government grants to acquire conservation lands that are sold to governmental entities (Question 13); and how sales of conservation lands to governmental entities in the United States enhance the ability of the Conservancy to carry out its mission (Question 14).

The Conservancy's responses to those six questions are contained in Parts I through IV of this memorandum.² As described more fully in this memorandum,³ the Conservancy's program of sales of conservation lands to governmental entities has for

¹ The questions contained in Part II of the Committee's letter that are not discussed in this memorandum request data or documents that do not require explanation or elaboration. Responses to those requests, and the data and documents requested in connection with the questions discussed in this memorandum are being provided to the Committee separately. The Committee is also being provided with all documents referred to in this memorandum.

² Part V of this memorandum contains the Conservancy's responses to an additional five of the questions posed by the Committee in Part II of its letter dated March 3, 2004.

³ The responses contained in this memorandum are limited to the sale of conservation lands by the Conservancy to the United States Government and various State and local governmental entities. The Conservancy also engages in conservation activities outside the United States and works collaboratively with non-governmental organizations and national and local governments in those countries.

many years been conducted in accordance with a “no net profit” policy (Part I); the selection of lands for sale to governmental entities is in principle no different than the selection of lands for inclusion in any of the other conservation programs undertaken by the Conservancy and the identification of possible governmental purchasers is based principally on the statutory mission of those purchasers (Part II); the Conservancy has a specific policy with respect to government grants made for the acquisition of specific conservation land (Part III); and sales of conservation lands to governmental entities play a critical role in enabling the Conservancy to carry out its mission (Part IV).

I.

Financial Aspects of Sales to Governments (Questions 3 and 9)

A. The Conservancy’s “No Net Profit” Policy (Question 3).

Under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Act of 1987,⁴ the United States Government is generally required to offer fair market value to non-profit organizations (such as the Conservancy) when it purchases land or interests in land (including conservation easements) from those organizations. While this requirement may enable some non-profit organizations to sell lands to the federal government at a profit, the Conservancy has for many years had a “no net profit” policy for sales of land to governmental entities at all levels.

This policy was formally established by the Conservancy’s Board of Governors in 1995 and, as so established, it provided: “The Nature Conservancy will not make a profit when assisting any governmental agency in acquiring conservation land unless the President makes an exception.”⁵ The 1995 policy, which was codified in 1996,⁶ permits

⁴ 42 U.S.C. section 4601 et seq.

⁵ Limited exceptions have been made in some cases where the Conservancy incurred costs in one transaction that could not be fully recovered where there was a second transaction that was proximate to the first in time and location and involved the same governmental purchaser. In some such situations, the governmental purchaser allowed all or a portion of those costs to be recovered in the second transaction subject to the limitation that the purchase price paid in the second transaction not exceed the fair market value of the land involved in that transaction.

⁶ In 1996, the Conservancy completed a comprehensive project to codify all of its then outstanding policies and standard operating procedures.

the recovery of direct and indirect expenses incurred by the Conservancy. These include the purchase price paid for the land, direct expenses such as appraisals, recording fees and interest expense; and, in some instances, certain indirect expenses.

The Conservancy's audited financial reports, as published on its web site and made available to the Committee, demonstrate that the Conservancy has in fact adhered to its policy of not profiting from sales of conservation lands to governmental entities. As set forth in Note 14 to its audited financial reports, for its fiscal year ending June 30, 2003, the Conservancy "recovered" \$172,566,000 on conservation lands sold to governmental entities (and others) and, with respect to these lands, its direct and allocated indirect costs totaled \$204,936,000. For the fiscal year ended June 30, 2002, the comparable figures are \$181,884,000 and \$246,309,000. As is described more fully in note 14 to the Conservancy's published financial statements, these figures compare the proceeds received from the sale or transfer of conservation lands to governmental entities and others (the "recovery") with the related costs, including the original purchase price and interest and overhead during the period the land was held by the Conservancy. The amounts so "recovered" are recognized by the Conservancy when they are received. Other direct costs and interest are recognized in the Conservancy's financial records when they are incurred, but they are included in the preceding figures as a cumulative amount in order to match project recovery and cost properly.⁷

The basic application of the Conservancy's "no net profit" policy may be illustrated by several simple examples involving conservation land having a value of \$100 at the time it is acquired by the Conservancy. *First*, if the Conservancy purchases the land for \$90, and incurs no other costs properly allocable to that land, it will sell the land to a governmental entity for \$90 even though the land is worth \$100. *Second*, if in the preceding example, the Conservancy had incurred direct and allocable indirect costs

⁷ As set forth in Note 14 to the Conservancy's financial statements, the cost of land sold includes the actual acquisition price. Other direct costs include items such as surveys, legal fees, and real estate taxes. Interest includes both payments to third parties on loans or mortgages and internal financing charges representing cost of capital. Overhead expenses consist of indirect expenses allocable to the land projects.

of \$5 (total cost of \$95), it could only recover \$95 even though the land was worth \$100. Note, in some cases, the Conservancy chooses not to recover all or a portion of its costs because it desires to make additional contributions to the overall costs of the project. In other cases, the Conservancy may recover less than its total costs because the funding is unavailable. *Third*, if in the preceding example, the Conservancy had incurred additional direct and allocable indirect costs of \$15 (total cost of \$105), it could only recover \$10 of those additional costs because governmental entities generally may not pay more to purchase conservation land than the fair market value of the land (here \$100).⁸ *Fourth*, if in the preceding example, the land appreciated in value to \$150 before its sale to the governmental entity, the Conservancy could fully recover the \$15 in additional costs, but not the additional \$45 of the appreciated value. *Fifth*, if the Conservancy had purchased the land for \$100 and its value did not appreciate before the sale to the governmental entity, the Conservancy would sell the land for \$100 and would not recover any of its otherwise properly allocable additional costs, again because governmental entities generally may not pay more for conservation lands than their fair market value.

On March 12, 2004, the Executive Committee of the Conservancy's Board of Governors strengthened the 1995 policy with a new policy entitled "Recovery of Costs in Government Real Estate Transfers". The new policy states: "The Nature Conservancy will recover only its costs when transferring real estate or any interest in real estate to a governmental agency for a conservation purpose". Under this new policy, the Conservancy's "no net profit" policy continues in effect, but more specific guidance has been provided with respect to the inclusion of direct and indirect costs in the Conservancy's sales prices to governmental entities (which of course are in all cases subject to applicable legal restrictions that governmental entities generally may not pay

⁸ Some federal agencies may permit recovery of certain direct costs (e.g., appraisal costs) in addition to the fair market value of the land. Some state and local agencies may also allow recovery of certain indirect costs in addition to the fair market value of the land.

more than fair market value for the conservation lands they purchase).⁹ This expanded guidance is contained in a standard operating procedure, which was also adopted on March 12, 2004. As discussed more fully below, the new procedure contains specific rules for the calculation of the purchase price to be received from governmental entities for conservation lands.¹⁰ These rules govern recoverable costs, non-recoverable costs, and required deductions.

Recoverable costs include acquisition and sale costs; external and internal interest charges; capital costs (as determined under generally accepted accounting principles) for improvements made to land while the Conservancy holds title to the land; and expenses paid to third parties for activities requested or required by the governmental entity. In addition, certain indirect costs (personnel costs, travel costs, etc.) may be recovered, but only at a rate not to exceed three percent of the purchase price paid by the governmental entity. *Non-recoverable costs* include personnel costs (except as recovered as part of the computation of the three percent indirect cost allowance); and maintenance and operating costs (such as costs of conservation planning and monitoring, maintaining existing improvements, removal of invasive species, and insurance).

Once the Conservancy has established its total recoverable costs under these rules, it must make *required deductions* in the amount of otherwise recoverable costs for any includable costs for which reimbursement has been received. These required deductions include: (1) the value of gifts (including private grants) received and restricted to the conservation lands involved; (2) any government funding received for acquisition or

⁹ The 2004 policy also provides more specific substantive and procedural rules for waivers of the policy. A waiver may be sought only where literal application of the policy would result in “an unanticipated or unreasonable outcome” and waivers will be granted following review by a special committee only if the waiver (i) will not violate the intent and spirit of the policy, (ii) enables an important conservation objective to be accomplished; and (iii) is likely to withstand public scrutiny in light of the overall policy. Any waivers granted will be reported to the Conservancy’s Board of Governors.

¹⁰ The new standard operating procedure also provides rules for the allocation of costs in three special situations: (i) sales to a governmental entity of only a partial interest in land, such as a conservation easement, or a parcel of a larger tract of land; (ii) aggregate sales to a governmental entity of tracts of conservation land acquired by the Conservancy from different sellers or in different transactions; and (iii) multiple sales where conservation lands acquired in a single transaction are thereafter sold over time in parcels to a governmental entity.

other costs relating to the conservation lands involved (including costs for capital improvements); and (3) net income received by the Conservancy from any activities (e.g., a significant timber harvest) that have a material effect on the value of the conservation lands involved.

To summarize, the Conservancy has for nearly a decade had a specific written policy of “no net profit” on sales of conservation lands to governmental entities and the financial data described indicates that this policy has been followed.¹¹ The new procedures recently adopted by the Conservancy, as described above, provide the specific cost allocation rules necessary to ensure that this long-standing policy will continue to be given effect on a transaction by transaction basis.¹²

B. Land Recoveries and Acquisition Costs.

As discussed elsewhere in this memorandum, acquisition of conservation lands and the re-sale of those lands to governmental entities is a strategy that has been used for many years by the Conservancy to carry out its conservation mission. As discussed more fully below, the fact that recoveries on the sale of conservation lands to governmental entities is often less than the Conservancy’s acquisition and other costs does not indicate that the Conservancy may have “. . . paid too much for the land (e.g., from a related party) and couldn’t recover the cost from the government”.

Since June 1996, the Conservancy has had a specific standard operating procedure governing the documentation of the value of real estate.¹³ This policy states that “. . . the fair market value of interests in land must be substantiated at the time of acquisition by

¹¹ Transaction item 35, referred to in the Committee’s letter of March 3, 2004 did not in fact result in a profit to the Conservancy. As previously reported to the Committee, the information originally reported with respect to that transaction was in error and corrected information has previously been supplied to the Committee. This transaction in fact involved a donation by the Conservancy to an entity of the federal government, and the Conservancy did not recover any portion of its expenses related to that transaction.

¹² The Conservancy has submitted, for the Committee’s information, copies of two documents relating to land sales to government: 1) “Department of Interior Land Acquisitions Conducted with Assistance of Nonprofit Organizations”, dated June 3, 1992; and 2) “Land Acquisitions Involving Nonprofit Conservation Organizations”, dated June, 1994.

¹³ This policy codified then existing practice, as reflected in various memoranda. As noted in Footnote 5 above and in other submissions made to the Committee, the Conservancy in 1996 completed a comprehensive project to codify its then existing policies, procedures and practices.

The Nature Conservancy". The purpose of this policy was set forth at the time as follows:

The Nature Conservancy must keep accurate records of its asset base for audit and accounting purposes. In addition, accurate valuation records help the Conservancy avoid violating the Private Benefits Rule which provides that as a 501(c)(3) tax-exempt organization, the Conservancy cannot do anything that inures to the benefit of a private individual. *This includes paying in excess of fair market value or selling for less than fair market value.* (Emphasis supplied.)

In the case of conservation lands acquired by purchase, this procedure has generally been implemented by securing appraisals of the lands at the time of purchase unless, in individual cases, there are other reliable methods the use of which is documented for the file by the appropriate Conservancy staff member.¹⁴ Thus, the Conservancy has, and has had, a specific policy to address the concerns raised by the Committee.

The Conservancy has long recognized that the potential for excessive payments by tax-exempt organizations for property merits special scrutiny where the seller has a relationship to the organization. Under current tax laws, in the case of "public charities" such as the Conservancy, transactions such as the purchase of conservation land from related parties generally are permissible if they are structured in accordance with the so-called "fair market value and arm's-length" standard. Since 1995, the Conservancy has had a specific written policy on conflicts of interest and, under this policy, any transactions with related parties are subject to advance review and approval to ensure compliance with the requirement of the arm's-length standard and with other applicable legal, tax, and ethical considerations.

As in effect until June 2003, this policy required that all purchases of land by the Conservancy from related parties (including land intended to be resold to a governmental

¹⁴ In limited instances, the Conservancy has paid a purchase price slightly in excess of the valuation opinion of its appraiser where there was a serious threat to the conservation purpose of a particular parcel of land (e.g., the landowner and his or her appraiser believed a higher price was available if the land was sold for development and the landowner intended to pursue that alternative). This has occurred only following a determination by the Conservancy staff based on independent appraisal information that the amount actually paid was within an acceptable range (e.g., 10 percent) of the appraised valuation.

entity) be reviewed and approved in advance by the Conservancy's general counsel. For this purpose, the term "related party" included any individual who is, or was during the 12-month period ending on the date of the transaction, a member of the Board of Governors, a State Chapter Trustee, or an employee of the Conservancy; any individual who was a close relative of such an individual; and any entity in which such an individual or his or her close relatives own directly or indirectly a significant equity interest.

In June 2003, the Board of Governors concluded that all purchases and sales of land and interests in land from or to related parties (as defined above), although infrequent in prior years, should be prohibited. In addition, on March 12, 2004, the Executive Committee of the Board of Governors approved a strengthened conflicts of interest policy and extended that policy to additional persons, including major donors (i.e., an individual or entity that makes a gift or pledge of \$100,000 in any form (cash, in kind, or bargain-sale value) at any time or cumulatively over the five-year period preceding the date of a proposed transaction).

To summarize, the Conservancy has policies and procedures requiring that the value of land be substantiated at the time of its acquisition, prohibiting all purchases of land from related parties, and requiring advance review and approval of purchases of land from major donors. These policies and procedures were and are intended to ensure that the Conservancy has not and will not make excessive payments to acquire land, including conservation land subsequently transferred to a governmental entity. As described more fully below, the losses incurred by the Conservancy in such cases are typically attributable to other factors.

The Conservancy periodically purchases conservation land and donates that land to a governmental entity. In such cases, the Conservancy necessarily incurs a loss. For example, in 1978, the Conservancy purchased 55,000 acres on Santa Cruz Island, the largest island in California's Channel Islands National Park, for \$2.5 million. In September, 2000, the Conservancy donated 8,500 acres of this land to the National Park

Service, increasing the Service's ownership on the Island to 14,000 acres. The Service estimated the value of the donation at \$25 million.

Losses may also be incurred when there is a substantial delay between the purchase of the conservation land by the Conservancy and its resale to a governmental entity. These delays may arise when, for example, a governmental entity has extensive and time-consuming land acquisition procedures and the original landowner insists on an immediate sale, or where the necessary appropriations cannot be obtained promptly for budgetary reasons or otherwise. In such cases, where there is such a delay, the Conservancy incurs a broad range of costs. Some of these costs, such as maintenance and operating costs, generally are not recoverable under the Conservancy's policies. While some costs, such as interest on acquisition indebtedness, are recoverable under the Conservancy's policies, they will not be recoverable unless the total allocable costs are less than the property's fair market value when it is acquired by the governmental entity (or if the acquiring agency specifically permits such expenses to be recovered). Where the fair market value of the land is less than the amount necessary to enable the Conservancy to recover all of its properly allocated costs, the application of the Conservancy's "no net profit" policy converts the sale to the governmental entity into an "economic loss" to the Conservancy.

Many governmental entities seek the Conservancy's assistance in acquiring conservation lands, but their commitment to acquire the lands from the Conservancy is almost universally contingent on the appropriation by Congress, or State or local legislative body, of the necessary funds. As noted above, this often lengthens the Conservancy's holding period, since in numerous instances the purchase of conservation lands cannot be deferred until appropriations have been enacted (e.g., where the private owner of the land intends to sell the property promptly and will sell to others if the Conservancy is unwilling to purchase the property immediately). For example, in 2003, after extended negotiations with the U.S. Fish and Wildlife Service and a private landowner, the Conservancy purchased a 2,640 acre tract of land bordered on three sides

by the St. Marks National Wildlife Refuge in Florida. The Administration requested funding for this acquisition on three separate occasions (FY03, FY04, and FY05). Based on amounts appropriated for fiscal year 2003, the Conservancy transferred 1,281 acres to the Service. The Conservancy still holds and maintains the remaining acreage pending the enactment of additional appropriations legislation. Had the Conservancy not participated, at its expense, in the transaction, it is likely that this particular land would have been sold for non-conservation purposes.

II.

Identification of Land and Purchasers (Questions 11 and 12)

A. Identification of Land.

From its organization in 1951, the Conservancy has focused its conservation programs on high priority conservation areas. In 1995, the Conservancy adopted the “Conservation by Design” planning process to identify lands and waters for inclusion in its various conservation programs. As described more fully in other materials provided to the Committee, Conservation by Design is a strategic, science-based planning process that governs both the selection of a portfolio of sites within broad ecoregions and the identification of the conservation strategies to be applied with respect to each such site.¹⁵

The Conservancy uses the Conservation by Design methodology for all of its conservation programs, including in connection with the acquisition of conservation lands that are subsequently transferred to a governmental entity. As noted, the Conservation by Design methodology is used not only to determine “where” the Conservancy works (i.e., the identification of portfolio sites within each ecoregion), but also to determine “how” the Conservancy works (i.e., the selection of specific conservation strategies for each portfolio site).

One such conservation strategy is the acquisition of conservation lands. This strategy is most typically employed with respect to core conservation areas within a

¹⁵ The Conservation by Design methodology is described more fully in a separate memorandum provided to the Committee in response to the Committee’s questions on the Conservancy’s “Conservation Buyer” program, as set forth in Part I of the Committee’s letter dated March 3, 2004.

particular portfolio site (as opposed to areas that surround and buffer such core areas where strategies such as conservation easements are often sufficient). With respect to those conservation lands where an acquisition strategy is the most appropriate tool, the Conservancy then considers whether public ownership is appropriate. As discussed more fully elsewhere in this memorandum, the Conservancy often receives suggestions and recommendations from governmental entities for the acquisition of particular tracts of conservation land, but the Conservancy generally is unwilling to commit its finite resources to such a project unless both identification of the land and the selection of the conservation strategy (public ownership) are consistent with the Conservation by Design methodology.

B. Identification of Governmental Purchaser.

As the Committee is aware, the Conservancy is a decentralized organization that, subject to organization-wide policies and procedures, carries out its conservation mission in the United States through its various State Chapters and their regional and local offices. Thus, conservation land acquisition projects generally are developed in the first instance by the State Chapters in accordance with the Conservation by Design methodology.

In situations where long-term ownership by a governmental entity is a suitable conservation strategy, the Conservancy cannot, and does not, act unilaterally. As noted elsewhere in this memorandum, the Conservancy's field staffs maintain regular contacts with representatives of many governmental entities. Each governmental entity properly has its own programmatic priorities and discussions between the Conservancy and a governmental entity's representatives typically focus in the first instance on determining whether the Conservancy's priorities overlap with those of the governmental entity involved. In some instances, a governmental entity will initiate discussions with the Conservancy and suggest that the Conservancy acquire a particular parcel of conservation land. For example, a governmental entity may wish to acquire lands within an existing

wildlife refuge and seek the Conservancy's assistance, which may be provided if feasible and if the conservation land involved is within the Conservancy's own priorities.

There are of course other factors that must necessarily be taken into account in determining whether a particular governmental entity is an eligible purchaser. These include the statutory authority of the governmental entity to make the acquisition; the statutory, regulatory and planning requirements applicable to the entity's holding and management of the land; and the ability of the entity to secure appropriations or other funding to finance the acquisition. In nearly every case, the Conservancy has identified the prospective governmental purchaser before the Conservancy acquires the land and secures a letter of intent regarding resale to the government agency. This reduces the risk that the Conservancy will incur substantial and unforeseen costs in holding the land.

III.

Use of Government Grants to Acquire Lands for Re-Sale (Question 13)

As a general matter, the Conservancy rarely receives support from governmental entities that is unrestricted as to their use. Unrestricted funds from all sources (including any governmental support) are used by the Conservancy for the general support of the Conservancy and, as designated by the Board of Governors, for land acquisition, land preservation funds (which are used to provide internal funding for the purchase of conservation land), other specific conservation project funds, and to increase endowment funds.

The Conservancy also receives funds, including government grants, that are restricted as to their use. Specifically, much of the money received as grants from or under contracts with federal, state and local government agencies is for the conduct of specific conservation work, such as carrying out restoration or stewardship activities, or for scientific research. Some of the work supported by these grants and contracts is required by law (e.g., some governmental agencies are required to inventory animals and plants on property such as military bases and these agencies often rely on the Conservancy's expertise).

As the Committee's question indicates, the Conservancy also receives from time to time funds (including government grants and grants from the National Fish and Wildlife Foundation) that are made for the acquisition of specific conservation land by the Conservancy. If that land is subsequently re-sold to a governmental entity, the Conservancy's current policy expressly requires that the amount of that specified government funding received for acquisition or other costs (including capital costs) related to that conservation land that be deducted from the amount of the costs otherwise recoverable by the Conservancy upon the sale of the property to the governmental entity.

IV.

Land Sales to Governments Support the Conservancy's Mission (Question 14)

The mission of the Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. As described more fully elsewhere in this memorandum, the Conservancy has developed and uses a strategic science-based process called "Conservation by Design" to identify lands and waters for inclusion in its conservation programs.

In the United States, the Conservancy has traditionally used land acquisition as a principal tool to accomplish its conservation mission and today owns and manages more than 1,400 preserves throughout the United States. In many instances, however, the Conservancy's mission can be accomplished in other ways. In such cases, the Conservancy uses a broad range of alternatives to the "purchase and hold" strategy. Sales to governmental entities are one such alternative. If a governmental entity with a mission that is compatible with the Conservancy's mission has the capacity to ensure the permanent protection of a particular parcel of environmentally sensitive land, the ownership of that parcel and the payment of the costs of its conservation and maintenance, effectively enables the Conservancy to "stretch its resources" and achieve more conservation results with its financial resources.

Many government agencies have missions that are compatible with that of the Conservancy. For example, at the federal level, the statutory mandate of the National Park Service is to conserve the parks and the “scenery and the natural and historical objects and wildlife therein, unimpaired for the enjoyment of future generations”.¹⁶ Similarly, and although there are multiple statutory authorities for the creation of National Wildlife Refuges, the mission of the National Wildlife Refuge System is “to administer a national network of lands and waters for conservation, management and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans”.¹⁷ Both the National Park Service and the U.S. Fish and Wildlife Service have been key partners in multiple land transactions with the Conservancy.

The Conservancy has worked with the National Park Service on land acquisition projects that have resulted in the Service acquiring more than 225,000 acres of land in approximately 40 units of the Service located in more than 24 States. Similarly, between 1967 and February 2003, the Conservancy completed more than 1,100 land transactions with the U.S. Fish and Wildlife Service in 44 States, resulting in the transfer to public ownership of approximately 1.5 million acres. These types of transfers all involve lands and waters with substantial ecological significance and their preservation contributes positively and significantly to the mission of the Conservancy as well as the governmental entity and, as noted, enables the Conservancy to protect more sensitive land than would otherwise be possible.

The Conservancy believes that all, or virtually all, of the lands sold to governmental entities serve significant conservation or biodiversity purposes. As described elsewhere in this memorandum, lands (including lands that are transferred to governmental entities) are selected by the Conservancy as being important to protect because of their environmental and biodiversity significance, as determined under the Conservation by Design methodology. In addition, governmental entities that purchase

¹⁶ 16 U.S.C. Chapter I, Subchapter I, Sec. 1.

¹⁷ 16 U.S.C. Chapter 5A, Subchapter III, Sec. 668 dd(a)(2).

conservation lands are subject to limitations on the types of land they may acquire and these almost always include some aspect of biodiversity protection. In some instances, and consistent with its objectives with respect to compatible human uses, the Conservancy has worked with State or local governmental entities to undertake projects where both biodiversity and agricultural conservation goals can be met.

As discussed more fully in other materials provided to the Committee, the Conservancy maintains a Conservation Land System (the "CLS"), a computerized database containing information about the Conservancy's transactions in, and holdings of, land. Conservancy staff are required to enter information about each land transaction (including transactions undertaken with government agencies at any level) into the CLS. Under CLS changes adopted in 2003, the biodiversity purpose served by each such transaction is a "required field" and must be entered. The required information includes (a) whether the land has been identified as a "conservation area priority" in accordance with the Conservation by Design methodology; (b) the key conservation strategies to be employed with respect to the land; (c) the Conservancy's conservation-specific role with respect to the land; (d) key threats to the land, such as fire or invasive species; and (e) the plants, animals and/or natural communities to protected.¹⁸ All land acquired by the Conservancy and resold to a governmental entity will of course be included in the CLS and there is thus a record of the conservation purpose with respect to each parcel of land sold by the Conservancy to a governmental entity.¹⁹

It is not possible to quantify with precision what portion of the Conservancy's sales of conservation lands to governmental entities involved land that a governmental entity had itself identified *unilaterally* before the land was acquired by the Conservancy. As discussed earlier in this memorandum, the Conservancy's staff meet regularly with

¹⁸ Under the prior database system, much of this information could have been included, but only the biological/conservation factors (plants, animals and/or natural communities) were mandatory (i.e., a "required field").

¹⁹ In recent years, the Conservancy has also prepared "hard copy" project notebooks for each federal land acquisition project for which funding has been sought from the Land and Water Conservation Fund and the Forest Legacy program, which are funded by Congressional appropriations. These project notebooks contain descriptions of the biodiversity significance of the lands involved.

national, regional, State, and local representatives of the federal land management agencies, to discuss conservation priorities. In the course of these discussions, land acquisition opportunities are routinely identified and discussed. As a general proposition, if the relevant agency expresses little or no interest in acquiring a particular parcel, the Conservancy will not pursue the acquisition on behalf of the agency. Instead, if the land has important conservation values, as determined by the Conservation by Design methodology and acquisition of the land would advance the Conservancy's then current priorities the Conservancy might acquire and maintain the land as one of its preserves. Alternatively, the Conservancy might seek to ensure protection of the land through other means such as a conservation buyer transaction or an acquisition by a different governmental entity.

In some instances, where the relevant federal agency has a specific interest, it may issue a formal "letter of intent", which sets forth the agency's desire to acquire the particular parcel, subject to securing the necessary appropriations. In such a case, the Conservancy will typically participate in the acquisition project if it is compatible with the Conservancy's mission and is supported by a request for the Conservancy's assistance.²⁰

To summarize, the Conservancy participates in transactions resulting in the acquisition of conservation land by governmental entities when such transactions enhance the Conservancy's ability to carry out its mission. That mission can sometimes be accomplished by permitting compatible human uses on the lands involved. Some of these uses may involve passive recreation such as hiking. Many governmental entities have similar policies with respect to compatible human uses. The Conservancy does not, however, act to protect lands that are used for active recreational purposes such as golf

²⁰ Most federal land acquisition projects involving a purchase and resale by the Conservancy involve in-holdings within existing acquisition boundaries. For example, in 2000, Congress enacted the "Great Sand Dunes National Park and Preserve Act", which contemplated the purchase by the Conservancy of the 97,000 acre Baca Ranch, the creation of the Baca National Wildlife Refuge and the establishment of the Great Sand Dunes National Park. In January 2002, the Secretary of the Interior entered into an agreement with the Conservancy to purchase the Baca Ranch from the Conservancy, subject to the availability of appropriated funds.

courses and baseball fields. Thus, in response to the Committee's question, the Conservancy's land transactions with governmental entities do not involve lands that have primarily an active recreational purpose or use.

The Conservancy's record of collaborative work with governmental entities at all levels is illustrated by an ongoing project in Alabama, where the Conservancy is working with the U.S. Fish and Wildlife Service to provide for the public acquisition of land within the Cahaba River National Wildlife Refuge. The refuge was established in 2000 with the support of Alabama's Congressional delegation, its Governor and conservation commissioner, and local officials. The Conservancy acquired at its expense options to acquire approximately 3,400 acres to establish the refuge. Federal appropriations legislation in FY02 and FY03 enabled the Conservancy to complete the purchase of approximately 2,900 acres and re-sell the land to the U.S. Fish and Wildlife Service. The Conservancy will continue to work to complete the governmental acquisition of the full 3,400 acres and other lands within the refuge and will partner with the Service in a program to restore longleaf pine areas within the refuge.

V.

Conservancy Responses to Additional Committee Questions

5 a. Based on your narrative answer to question II.2 above, we understand that the amounts appearing under the "Amount Donated to Government" column are being reported in "costs of goods sold." Is our understanding correct?

The amounts under "Amount Donated to Government" on the detailed spreadsheet provided by the Conservancy in response to the Senate Finance Committee July 16, 2003 letter reflect outright donations of land from the Conservancy to government agencies as well as the costs the Conservancy incurred in excess of the amount received from government agencies. In either case, the "costs of goods sold" amount reflects the removal of the book value of the land that was subsequently transferred.

5 b. Also indicate how the "Amount Donated" column was treated for financial statement purposes.

First, if the entire parcel is donated to the governmental entity, it appears as “value of conservation land and easements donated to government and others” in the financial statements. If, however, the costs incurred are in excess of the amount received from the governmental entity, that difference is a net loss on the financial statements. For example, assume that the Conservancy acquired a parcel of real estate for \$1,000,000, and then subsequently sold that parcel to a federal agency for \$750,000. In this example, the “cost of goods sold” found in the expense section of the Conservancy’s income statement would reflect \$1,000,000 paid by the Conservancy for the property. In addition, “sales of conservation land” found in the revenue section of the Conservancy’s income statement would reflect the \$750,000 the Conservancy received for the property. Assuming there were no other transactions for the period, the Conservancy’s income statement would show a \$250,000 “loss”, which would be reflected as a decrease in the Conservancy’s net assets.

6 a. It is our understanding that the information provided on your lists in response to question 2 regarding land transfers to the government over \$500,000 represents only Federal transactions as so limited. We assume that amounts reported on Form 990, Part VII, line 93c also consists of other categories such as Federal transfers under \$500,000, state and local transfers, Indian tribal government transfers, or foreign government transfers. Please confirm this understanding and discuss.

Line 93c on the 990 form aggregates all value received by the Conservancy for all transfers OUT of real estate or any interest in real estate during any particular fiscal year. All transfers are reported on that line no matter the amount received and no matter what type of entity or individual. Included would be transfers to federal agencies, state agencies, colleges and universities, local agencies, non-profits, foreign governments, individuals, Indian tribes, and for-profit corporations.

6 b. Provide a breakdown of amounts reported on line 93c for each of the categories; Federal transfers under \$500,000, state and local transfers, Indian tribal government transfers, or foreign government transfers; for the three most recent 990s by TNC filed with the IRS and related costs of sales information.

Fiscal year 00

1. Recovery of costs

| | |
|-------------|------------|
| Federal | 21,146,733 |
| State/Local | 21,429,984 |
| Foreign | -0- |
| Tribal | -0- |

2. Cost to The Nature Conservancy

| | |
|-------------|------------|
| Federal | 28,229,061 |
| State/Local | 33,130,810 |
| Foreign | -0- |
| Tribal | -0- |

Fiscal year 01

1. Recovery of costs

| | |
|-------------|------------|
| Federal | 21,060,077 |
| State/Local | 31,988,720 |
| Foreign | -0- |
| Tribal | -0- |

2. Cost to The Nature Conservancy

| | |
|-------------|------------|
| Federal | 28,632,929 |
| State/Local | 47,959,188 |
| Foreign | -0- |
| Tribal | -0- |

Fiscal year 02

1. Recovery of costs

| | |
|--------------------------------------|------------|
| Federal | 16,789,810 |
| State/Local | 96,415,708 |
| Foreign (Costa Rica, Virgin Islands) | 2,500,000 |
| Indian Tribe | 1,704,094 |

2. Cost to The Nature Conservancy

| | |
|--------------------------------------|-------------|
| Federal | 19,722,754 |
| State/Local | 162,674,831 |
| Foreign (Costa Rica, Virgin Islands) | 3,556,682 |
| Indian Tribe | 2,158,965 |

Note that in all three years, the cost to the Conservancy of the transactions far outweighed the amounts received from federal, state and local, and foreign governments as well as Indian tribes.

7 b. (As modified by agreement with the Committee staff.) Provide a narrative summary of each of the following projects as well as dates of transfers, acreage, and the transferee: Virginia Coast Reserve, VA (Nos. 416-420); Virginia Eastern Shore Megasite, VA (Nos. 421-423); Herring Creek Farms, MA (Nos. 604-607); Mashomack (Shelter Island), NY (Nos. 1027-28); Kentucky River Palisades, KY (Nos. 3617-3623); and Davis Mountains, TX (No. 5856).

Is there any connection between the last four items and the conservation buyer transactions – related parties detailed in your answer to question 1 of the July 16, 2003 letter? If so, please discuss.

Virginia Coast Reserve
Virginia Eastern Shore Megasite
Virginia Eastern Shore National Wildlife Refuge²¹

Transactions 416, 417, 418 Virginia/Virginia Coast Reserve/Wachapreague

The Wachapreague property, while not part of the Reserve, is near Finney Creek and has ecological, scientific and aesthetic value as a “buffer area” directly and indirectly affecting the quality and ecological health and well-being of other lands and waters owned or managed by the Conservancy. Certain uses of the Wachapreague property would adversely affect the quality and health of riparian waters, wetlands and marshes, and accordingly limiting and controlling uses of the property benefits the general public and the Reserve. Controlling the use or development of the property helps to maintain the Reserve in its current, natural, scenic and ecologically healthy condition and insures the continued high quality of the nearby waters, wetlands and marshes.

Transactions 416 and 418 – These lease transactions were entered into with the Town of Wachapreague. The fire department is directly across the street from a parcel owned by the Conservancy, and the fire department has always used a small portion of the parcel for parking and to turn vehicles around when backing into the station. This

²¹ See description of Virginia Coast Reserve contained in responses to XII, Question 5 “Related Organizations” submitted to the Committee on April 5, 2004 (page 8).

low intensity use is consistent with the Conservancy's goal to limit degradation of the quality of nearby waters. There has been a lease arrangement since 1992 whereby the Conservancy leases to the town the land directly across from their fire station for parking at a rate of \$1.00/year. The lease renews automatically each year.

Transaction 417 – This is a lease agreement between the Conservancy and the Town of Wachapreague, Virginia for a 10' by 10' area under the "Welcome to Wachapreague" sign. The lease is for \$1.00/year and renews automatically. The use of a small area of this tract for the town's sign has no adverse impact on the remainder of the Conservancy's land. Protection of this property from inappropriate development serves to protect the quality and health of nearby waters, wetlands and marshes.

Transactions 419 and 420 Virginia/Virginia Coast Reserve/Quinby

The Quinby property, while not part of the Reserve, fronts on Quinby Harbor and has ecological, scientific, educational and aesthetic value as a "buffer area" directly and indirectly affecting the quality and ecological health and well-being of other lands and waters owned or managed by the Conservancy. Certain uses of the Quinby property would adversely affect the quality and health of riparian waters, wetlands and marshes, and, accordingly, limiting and controlling uses of the property benefits the general public and the Reserve. Controlling the use or development of the property helps to maintain the Reserve in its current, natural, scenic and ecologically healthy condition and ensures the continued high quality of the nearby waters, wetlands and marshes.

The Conservancy made a gift of this acreage to the county and received the use of 2 boat slips in perpetuity as partial consideration. The property conveyed is adjacent to Quinby Harbor and was restricted by language in the deed to "be used only for open space and/or public parking for the Quinby marina" Such use restrictions help to limit the degradation of the nearby Quinby Harbor and adjacent waters.

Transaction 421 Virginia Eastern Shore Megasite, Eastern Shore of Virginia National Wildlife Refuge/Northampton

The Conservancy acquired approximately 4.7 miles of abandoned railroad right of way 66 feet in width from Penn Central Corporation in 1985. The property is located in Northampton County, Virginia and adjoins the Eastern Shore of the Virginia National Wildlife Refuge. The right of way provides potential habitat for migratory birds and is a buffer along U.S. Route 13, the major north-south highway on the Eastern Shore. The acquisition helped to control future strip development at the ecologically significant southern tip of the Eastern Shore, a focal area for migrating birds as they prepare to cross the Chesapeake Bay. The Virginia Eastern Shore megasite plan had identified the southern tip of the Eastern Shore Peninsula as a critical site for the protection of migratory birds. Transfer of a portion of the Penn Central property to the U.S. Fish and Wildlife Service ensured its protection as a vegetated corridor for migratory birds.

The Conservancy sold two parcels of land to the Chesapeake Bay Bridge & Tunnel District as part of a mitigation project for the District's taking of land in the nearby National Wildlife Refuge. The properties were sold subject to restrictions as to use for wildlife habitat, passive outdoor recreation, agricultural or farming purposes. The properties were protected to ensure their continued viability as bird habitat and for the construction of a bike/ hike trail that would link Kiptopeke State Park and the National Wildlife Refuge. These parcels were subsequently conveyed by the District to the U.S. Fish and Wildlife Service.

Transaction 422 Virginia Eastern Shore, Eastern Shore of Virginia National Wildlife Refuge/Northampton

Skidmore Island in Northampton County, Virginia is within the boundaries of the Eastern Shore of Virginia National Wildlife Refuge at the southern end of the Eastern Shore, approximately one mile off the mainland in Magothy Bay. The island includes beach, upland forest, marsh and mud flats. Skidmore Island lies just to the east of the southern tip of the Eastern Shore peninsula and provides critical habitat for migrating

land and water birds. The southern tip is a significant rest and staging area for migratory birds before they cross the Chesapeake Bay. Inappropriate development of the island would have a material adverse impact on the National Wildlife Refuge and the wildlife resources it protects.

The Conservancy purchased Skidmore Island in 1986. The purchase included all the "land lying eastward of the Thoroughfare between it and the mainland." The property was surveyed on March 31, 1987 and shown to contain 108.5 acres, being 40.5 acres above mean high water and 68.0 acres between mean high and mean low water. The Conservancy conveyed the land to the U.S. Fish and Wildlife Service (USFWS) by warranty and quitclaim deeds.

Transaction 423 Virginia Eastern Shore National Wildlife Refuge/Northampton

This tract contains approximately 396 acres on the southern tip of the Eastern Shore of Virginia in Northampton County. The tract contains 7,000 feet of frontage on the Chesapeake Bay and was purchased by the Conservancy for inclusion in the Eastern Shore of Virginia National Wildlife Refuge. The area is of primary importance to shore and water birds which are migrants and summer residents, waterfowl, and fall migrants that include a large variety of birds, most notably raptors and songbirds. This area on the Eastern Shore has had the highest or near highest fall bird species counts for the eastern United States. At the time of the purchase, the site had been proposed for the new national wildlife refuge and had been targeted by the Conservancy as a key area for protection.

This land was purchased from the Chesapeake Bay Bridge and Tunnel District, a political subdivision of the State of Virginia. It was subsequently transferred to USFWS by warranty and quitclaim deeds to become part of the Eastern Shore of the Virginia National Wildlife Refuge.

Herring Creek Farm, Martha's Vineyard, MA²²

Immediately after acquiring fee title to the various lots, The Nature Conservancy granted a Deed of Conservation Restrictions over all of the lots referenced in Transactions 604-607 to the Conservation Commission of the Town of Edgartown. The conservation restriction provides that the "property is not to be improved with structures and improvements, except as described herein (certain building envelopes) and will be retained in a predominantly undeveloped, natural, open, agricultural and/or forested condition; threatened or endangered plants and animals that may exist will be protected." The conservation restriction is held by the Conservation Commission alone over the Central and East Fields, property retained by the Conservancy. The Conservation Commission and the Conservancy hold the conservation restriction jointly and severally, "with respect to such portions of the Property as may be owned by other Owners."

The parcels that were acquired by the conservation buyers included in the Conservancy's response to Question 1 of the Committee's July 16, 2003 letter are all subject to the conservation restrictions transferred to the Conservation Commission.

Davis Mountains – Harvey Amendment

The Nature Conservancy acquired the 241 acre Harvey Tract in Reeves County, Texas, on July 2, 1997, to establish the Sandia Springs Preserve. This tract includes East and West Sandia Springs and is home to a number of rare fish and plant species. In 2002, at the request of the local community and the Reeves County Commissioners Court, the Conservancy donated a 9.03 acre tract to the county to help establish a new community center. This 9-acre tract did not include any of the springs or spring runs, and was the highway frontage of the 241 acre Harvey Tract. The 9 acres was determined by The Conservancy science staff to be non-essential in the protection and management of the spring complex. The Conservancy, in its pursuit of community-based conservation, additionally is using this as an education opportunity with the people in the local town of Balmorhea to build an awareness and support of the importance of desert cienegas

²² See narrative description of the Herring Creek transaction contained in the "Responses to the Conservation Buyer Program", submitted to the Committee on April 15, 2004.

conservation. To date, the county is working on securing the funds for the community center. In the event the 9-acre tract is not used as a community center, county offices, or a park, the property will revert back to The Conservancy.

The Davis Mountains are located 45 miles away and, although ecologically there is a hydrologic link to conservation in the mountains and spring flow in the Balmorhea Complex, there is no relationship between this transaction and any Davis Mountain conservation buyer transactions.

Mashomack Preserve

The project involving the transactions identified by the Committee are part of the "Ram Island" project.

The Conservancy acquired approximately 2039 acres from Aeon Realty Corp. in 1980; most of this acreage now comprises the Conservancy's Mashomack Preserve. As part of this acquisition, the Conservancy also acquired two small parcels (totaling 2.8 acres by 1982 survey; 3.14 acres by 1993 survey) on the Ram Island\Little Ram Island isthmus – a spit of land extending into Gardiners Bay from the north end of Shelter Island, just across Coecles Inlet from Mashomack Preserve. The Conservancy already owned and managed two other parcels on Ram Island\Little Ram Island, so the Aeon parcels were incorporated into the Conservancy's preserve portfolio and managed as part of its Ram Island holdings until they were transferred to Suffolk County in October, 1993 as part of the Kessler project (see below).

In July 1992, the Conservancy made an offer to purchase the 37.46 acre Kessler tract (aka Section 9) on Ram Island on behalf of the Conservancy, Suffolk County, and the Town of Shelter Island. All three parties would contribute money toward the purchase price. The entire property was to be transferred out to Suffolk County simultaneously with the closing to the Conservancy. In December 1992, due to a title issue, Suffolk County determined that it could not take title to a 2.7 acre portion of the property (where numerous other parties had recreational access rights).

An agreement was made between Suffolk County, the Town of Shelter Island, and the Conservancy to proceed with the acquisition and disposition of the property as follows: the Conservancy would acquire the entire Kessler (Section 9) parcel; the Conservancy would sell Suffolk County the Kessler property minus the 2.7 acre “recreational use area” and 2 parcels on Ram Island already owned by the Conservancy (the Aeon Realty parcels). The Conservancy would sell the Town of Shelter Island the 2.7 acre “recreational use” portion of the Kessler tract.

The 3.14 acre parcel that the Conservancy sold to Suffolk County is adjacent to a parcel already owned by Suffolk County which abuts the Kessler property – resulting in three contiguous properties now owned and managed by Suffolk County.

Other than the fact that the properties are located in the same geographic area, there is no connection between the Dougherty transaction (Mashomack Preserve conservation buyer) and the transactions discussed above.

Kentucky River Palisade – White Oak Creek

The Kentucky River Palisades is among the most outstanding conservation area in the Interior Low Plateau Ecoregion. The site contains a continuous strip of forest, several unusual natural communities (mostly associated with outcrops, caves and springs), and many rare species. The White Oak Creek conservation area is located within the Kentucky River Palisades and is the most significant portion of the central Palisades. White Oak Creek is a tributary that flows into the section of the Kentucky River lying south of Jessamine Gorge and Polly’s Bend, an area with a relatively wide forest corridor along the river, some extensive gentle uplands as well as steep slopes, extensive tributary ravine forests, and representation of virtually all the rare species know in the area.

The Conservancy strategy at White Oak Creek has involved acquisition of riparian bottomlands, limestone cliffs rising out of the river, and wooded ravines and bluffs along White Oak Creek and the Kentucky River as core conservation areas and upland areas as buffer for the core conservation areas. The Kentucky River Authority and the Kentucky State Nature Preserves Commission have been important partners in

the protection and long term management of the core riparian areas. As the Conservancy has been able to acquire core riparian areas and as the Commonwealth of Kentucky has had funds to acquire them, the Commonwealth has purchased certain riparian tracts or the riparian portions of other tracts acquired by the Conservancy.

All of the tracts involved in transactions 3617 - 3623 are riparian tracts consisting of wooded ravines and bottomlands on both sides of White Oak Creek where it enters the Kentucky River and on both sides of the Kentucky River near the mouth of White Oak Creek. Together they provide critical protection for both White Oak Creek and the Kentucky River and the natural communities in the riparian area. In transactions 3617 - 3620, 3622 and 3623, the Conservancy conveyed fee title to approximately 800 acres of riparian lands to the Commonwealth. In transaction 3621, the Conservancy conveyed an access easement to allow access by the Commonwealth and the public to tracts owned by the Commonwealth.

None of the owners from whom the Conservancy acquired these tracts were connected with any of the conservation buyer-related parties detailed in the Conservancy's answer to Question 1 in the first SFC letter.

In two cases, the Conservancy acquired more land than it conveyed to the State of Kentucky in the transactions listed above. The remainder or portions of the remainder of those tracts were sold to conservation buyers as reported in answer to Question 1 in the first SFC letter as follows:

Transaction 3619 – Kentucky River Palisades – White Oak Creek – Day, Harry, Estate.

The Conservancy acquired 175 acres of land from the Day estate and sold 52.26 acres to Vincent and Elizabeth Austin, who are *not* related parties.

Transaction 3623 – Kentucky River Palisades – White Oak Creek – Wilson Estate.

The Conservancy acquired 633 acres and sold portions to the following conservation buyers:

David and Karma Cassidy – 51.98 acres – *not* related parties.

Marsha and Larry Sims – 100.14 acres – related parties.

Larry and Judy Duggins – 103.85 acres – *not* related parties.

8. *(As modified by agreement with the Committee staff.) Provide a narrative summary of each of the following projects as well as dates of transfers, acreage and the transferee: Big Cypress National Preserve, FL (Nos. 1465-1608); Big Cypress Preserve, FL (Nos. 1609-1638); Big Pine Key, FL (Nos. 1645-1816); Wisconsin Scientific and Natural Area Dedication, WI (Nos. 4582-4757); Lower Ozark Reserve Megasite, MO (Nos. 5263-5336). In addition, with regard to Big Cypress National Preserve, provide copies of any information regarding retention or sale of mineral rights.*

Big Cypress National Preserve

Note that “Big Cypress National Preserve” and “Big Cypress Preserve” are the same project.

In 1972, The Nature Conservancy began working with the National Park Service (NPS) to acquire tracts as additions to the Big Cypress National Preserve in Collier and Monroe Counties, Florida. The first National Preserve in the National Park System, Big Cypress serves as a supply of fresh, clean water for the vital estuaries of the ten thousand islands area near Everglades City. Most wildlife species native to semi-tropical Florida occur within the Preserve, which provides important feeding, nesting, resting, and wintering areas for birds migrating to and from South and Central America.

Between 1972 and 1977, the Conservancy acquired 186 tracts, totaling 735.70 acres, for purchase prices totaling \$127,410.²³ The majority of these tracts were acquired at tax title auctions conducted by the Clerk of Collier County Circuit Court, at the request of the NPS. The Conservancy began acquiring the title auction tracts in 1975, in accordance with guidelines provided by the NPS. The tracts were acquired with the intention to transfer ownership to the NPS as soon as practicable after title was vested in the Conservancy, with the understanding that the Conservancy would be reimbursed for all incidental expenses involved in conveying title to the NPS. The tracts were

²³ A chart detailing these transfers has been provided to the Committee.

transferred to NPS between 1976 and 1978, at purchase prices totaling \$217,248, which included reimbursement for expenses incurred by the Conservancy.

In 1977, the Conservancy began receiving lease checks from several oil companies. These payments were for oil leases on properties owned by the Conservancy at that time. These leases were in place prior to the Conservancy acquiring the property from Collier County tax title auctions. Until 1977, the Conservancy transferred the tracts to NPS with full mineral rights intact. In 1978, after consulting with NPS, the Conservancy began reserving the mineral rights on tracts being transferred to the NPS.²⁴ The Conservancy currently retains the mineral rights on 43.75 acres in Big Cypress National Preserve. The Conservancy has received from several oil production companies proposals to enter into oil leases, but has refused to do so.

Big Pine Key

The Nature Conservancy's Florida Keys Initiative was a comprehensive program launched in 1987 to protect rare tropical hardwood hammocks, coral reefs, tropical marine waters, and rare animals such as the Key deer and American crocodile. The Florida Keys were designated as an Area of Critical State Concern in 1974. Between 1987 and 1996, The Conservancy worked in conjunction with the U.S. Fish and Wildlife Service ("USFWS"), the South Florida Water Management District ("SFWMD"), and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("State") in acquiring properties located on Big Pine Key and surrounding areas in Monroe County, Florida. Properties acquired were located within the boundaries of the National Key Deer Wildlife Refuge ("Refuge"), the South Florida Water Management District's Save Our Rivers (SOR) Big Pine Key Project, and the State of Florida's Key Deer/Coupon Bight Conservation and Recreation Lands (CARL) Project.

²⁴ Copies of the deeds in which the Conservancy retained mineral rights have been provided to the Committee. To the best of the Conservancy's knowledge, all other tracts transferred to the NPS included the fee and underlying mineral rights.

Transfers to USFWS:

Between 1988 and 1991, the Conservancy acquired 21 properties for transfer to USFWS, totaling 63.69 acres, at purchase prices totaling \$781,690, valued at \$849,742. The properties were transferred to USFWS between 1989 and 1993 for purchase prices totaling \$834,876, to be managed as part of the National Key Deer Wildlife Refuge.

Transfers to SFWMD:

The Conservancy also acquired 29 properties in 1990 for transfer to SFWMD, totaling 38.89 acres, at purchase prices totaling \$403,800, valued at \$413,430. The Conservancy transferred these properties to the SFWMD, including all rights, in 1990 and 1991, at purchase prices totaling \$408,216. In addition, the Conservancy assisted the SFWMD in directly acquiring 125 properties (the “assist properties”), totaling 327.84 acres, at purchase prices totaling \$3,053,750, valued at \$3,304,927. All mineral rights held by the Conservancy on the assist properties were assigned to SFWMD.²⁵ Properties owned by SFWMD on Big Pine Key are managed in conjunction with the National Key Deer Wildlife Refuge by USFWS.

Transfers to State of Florida:

Between 1990 and 1995, the Conservancy acquired 21 properties, totaling 19.28 acres, at purchase prices totaling \$194,300, valued at \$207,350. The properties were sold to the State in 1998 at purchase prices totaling \$194,300, to be managed as part of the Coupon Bight Aquatic Preserve.

Wisconsin Scientific and Natural Area Dedication

The State of Wisconsin has an active dedication program through which any individual or entity can dedicate ecologically significant property by conveying an easement to the State of Wisconsin, Department of Natural Resources. The easement commits the landowner to protect the natural values of the dedicated property by controlling use, restricting development, and either managing or allowing the DNR to manage the property for the permanent protection of its natural values. The dedication

²⁵ The mineral rights associated with the 29 properties and the 125 assist properties were purchased by the Conservancy in 1990 from the Costa Trust/Richards Trust and were assigned to SFWMD.

program also was designed to promote public awareness, appreciation, understanding and respect for the state's natural heritage. Fee title to the property is retained by the landowner. The dedication recites that it is made for one dollar and other good and valuable consideration.

The Conservancy dedicates many of its Wisconsin preserves. Dedication gives the property an added layer of protection, in that dedicated areas are not subject to condemnation. In the 1990s, dedications of privately funded lands were also recognized as gifts under a state program which then allowed for the release of state funds to the DNR for conservation activities. Therefore, the Conservancy dedications leveraged additional funds for conservation in the State of Wisconsin.

The transactions identified by the Senate Finance Committee represent individual tracts of land involved in dedication transactions. While there are 175 tracts listed, there were many fewer transactions. For efficiency, the Conservancy tends to dedicate tracts at a particular conservation area in groups. For example, the tracts listed in items 4603 - 4709 (106 tracts) are encompassed in one dedication of approximately 56 acres at the Conservancy's Chiwaukee Prairie Preserve. This native prairie preserve on the shores of Lake Michigan was subdivided by developers in the 1920s and sold off in parcels of approximately ½ acre in size. The development company went bankrupt after the stock market crash in 1929 and the land was idle for many years. The Conservancy has had an on-going project to acquire parcels from the many individual landowners, consolidating ownership for the purposes of protecting and managing the property as a nature preserve. The State of Wisconsin supports this effort and recognizes the ecological value of the area. Therefore, the Conservancy offered, and the DNR accepted, a dedication of these parcels to give them statutory natural area protection.

Lower Ozark Reserve Megasite, Missouri

The Lower Ozark Reserve is a critically important conservation area within the Ozarks Ecoregion. It contains the Current River and one of its major tributaries, the Jack Fork River. This undammed cold-water river system, fed by large freshwater streams, is

one of the most significant of its size in mid-continental North America. It contains populations of 35 globally significant aquatic species, and 27 of these are the world's best or only populations of these organisms. The surrounding terrestrial landscape includes five major karst regions, containing global priority cave systems. This region is the central crown jewel of the last large-scale functional woodlands in mid-continental North America, with some of the lowest habitat fragmentation indices in the Midwest. The woodlands provide critical habitat for many breeding birds. The entire terrestrial landscape is characterized by unusually high levels of habitat diversity, with more than 33 global priority natural communities.

The Conservancy's strategy at the Lower Ozark Reserve is to sustain the watershed integrity, hydrology, and water quality in the Current River system and to link and conserve the high quality terrestrial natural communities. The project is part of a two decade-old initiative with the Missouri Department of Conservation (MODOC), the United States Forest Service (USFS), and the National Park Service (USNPS). The Current River is a National Scenic River overseen by the USNPS, and a small portion of the land acquired by the Conservancy from Kerr McGee has been transferred to USNPS (transactions 5282 and 5283). Much of the land which the Conservancy acquired from the Jefferson Smurfit Corporation was conveyed to the USFS. These properties consisted of inholdings within the Mark Twain National Forest, and USFS ownership of these tracts allows for increased management efficiency and reduction in the threat of adverse land uses (transactions 5330-5332 and 5334-5336). A portion of the Jefferson Smurfit Corporation land was also conveyed to the MODOC (transaction 5333). The Missouri Department of Conservation has been an active partner with the Conservancy since the onset of the Lower Ozarks project, assuming ownership and management responsibility for a large portion of the 80,819 acres which the Conservancy acquired in a 1991 purchase from the Kerr McGee Chemical Corporation (transactions 5263-5281 and 5284-5328). The Conservancy also retained a portion of the Kerr McGee land and works cooperatively with MODOC in many management activities. The Ellis tract was

transferred to the MODOC in order to consolidate ownership and management of the parcel with other MODOC lands which surround it on three sides (transaction 5329).

10. Regarding the schedules previously provided for sales by TNC to Federal agencies (over \$500,000), please provide a description of each column headings in the Federal agency sale schedule.

On November 18, 2003, the Conservancy submitted to the Committee a document entitled "Narrative Re: Transfers to Federal Agencies" that provides a description and narrative of the key columns on the above referenced Federal agency sale schedule. This narrative is being resubmitted in response to this question. If the Committee has additional questions, the Conservancy would be pleased to respond.

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The Conservancy stands ready to respond to any additional questions the Committee may have with respect to its sales of conservation land to governmental entities and related collaborative activities with governments.

Question 14 – Matching of Federal Grant Awards

The Conservancy manages hundreds of federal government awards (almost entirely grants and co-operative agreements) which have matching requirements. All federal awards, whether they contain matching obligations or not, are annually audited under the provisions of OMB Circular A-133 by an outside accounting firm. The OMB Circular A-133 audit reports issued by PricewaterhouseCoopers LLP (2002-2004) and Arthur Andersen LLP (2000-2001) are attached. Those audit reports contain unqualified opinions in all areas required to be reported upon under OMB Circular A-133. These audits include the examination of compliance with matching provisions of grant awards.

In question 14, you state that the Conservancy “may have included as part of its match the value of TNC paid employees who are working overtime.” As you know, there are two types of overtime: 1) overtime earned by non-exempt employees, for which compensation is paid; and 2) overtime recorded by exempt employees, for which compensation is not paid. With respect to overtime paid to non-exempt employees, these costs are allowable costs under OMB Circular A-122 in certain circumstances outlined in the Circular. The Conservancy follows the provisions of OMB Circular A-122 and/or any specific provisions that may be contained in a given grant award in determining whether to include non-exempt employee paid overtime as a match for a federal award. For the year ended June 30, 2004, the Conservancy included as overtime match, \$7,168, or 18/100^{ths} of 1%, of the amount of government revenue (excluding government awards for land acquisition) recorded in that fiscal year.

With regard to overtime hours worked by exempt employees, because no additional compensation is paid to these employees for the additional time worked, no overtime costs are recorded as a match to any federal award. In fact, the Conservancy’s payroll system reduces the effective rate of hourly pay for the exempt employee (since they are paid a salary, not an hourly wage) for the actual time worked in a given pay period, such that overtime recorded by such employees may never appear as a cost in the Conservancy’s system, and therefore eligible to be used as a match.

Prior to July 1, 2000, on a limited basis, some parts of the organization did utilize unpaid exempt employee overtime as an “in-kind” match on certain government awards. The organization discontinued this practice for all government awards starting on or after July 1, 2000. Attached is a copy of an electronic memorandum sent on February 18, 2000, advising the entire organization of the discontinuation of this practice. Other than this memorandum, the Conservancy has no policy statement regarding the use of overtime of Conservancy paid employees for meeting a federal match requirement.

o: ***@tnc*
c:
cc:
rom: Susan Lauscher@Legal@TNCHQ
ubject: Message from Neyman/Meinicke/Lauscher
ate: Friday, February 18, 2000 at 4:05:14 pm EST
ttach:
ertify: N

ATTENTION ALL PROGRAMS THAT CURRENTLY USE EXEMPT EMPLOYEE EXTRA HOURS AS A MATCHING EXPENSE FOR GOVERNMENT AWARDS

Using exempt employee extra hours as a match for government awards will be phased out. This refers to exempt employees who work more than a standard work week and count the extra hours as "match in-kind." New agreements starting on July 1, 2000 or later may not include this type of match.

If you have any questions, please contact your Grants Specialist.

Margie Neyman, Lee Meinicke, Susan Lauscher

R. FINANCE DIR. GRANTS INT. LEGAL
COUNSEL - GRANTS